

ENTERED

August 23, 2021

Nathan Ochsner, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

D. Houston, Inc.; A.H.D. §
Houston, Inc.; D. WG FM, Inc.; §
D. Cam, LLC; W.L. York, Inc.; §
D. Westwood, Inc. and D. §
Procyon, LLC, §

Plaintiffs, §

v. §

Civ. No. 4:20-cv-2308

United States Small Business §
Administration; Isabel §
Guzman, in her official §
capacity as Administrator §
of the Small Business §
Administration; United States §
of America; and Janet §
Yellen, in her official §
Capacity as United States §
Secretary of Treasury, §

Defendants. §

AGREED JUDGMENT

Before the Court is the parties' Joint Motion for Entry of Agreed Judgment (Doc. No. 40). The Court finds the motion well-taken and, based on the agreement of the parties, finds as follows:

1. WHEREAS, the parties in this case are Plaintiffs, D. Houston, Inc., A.H.D. Houston, Inc., D WG FM, Inc., D. Cam, LLC, W.L. York, Inc.,

D. Westwood, Inc., D. Procyon, LLC, and Defendants, the United States of America, the United States Small Business Administration, Isabel Guzman, in her official capacity as Administrator of the Small Business Administration, and Janet Yellen, in her official capacity as Secretary of the Treasury.

2. WHEREAS, on June 30, 2020, Plaintiffs filed suit to challenge application of 13 C.F.R. § 120.110(p) (“Challenged Rule”) as a criterion for their Paycheck Protection Program (“PPP”) loan eligibility.

3. In their live Amended and Supplemental Complaint (Doc. No. 11) Plaintiffs asserted claims arising under the First and Fifth Amendments to the United States Constitution, as well as under the Administrative Procedures Act, 5 U.S.C. § 701, *et seq.* The Defendants dispute that these claims have merit.

4. WHEREAS, Plaintiffs’ PPP loan applications were processed pursuant to the preliminary injunction and approved without reference to the Challenged Rule, and PPP funds were thereafter disbursed to Plaintiffs.

5. WHEREAS, the parties, through their counsel, have since agreed and consent to the entry of this Agreed Judgment.

6. THEREFORE, on the joint motion of the parties, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

7. The Court has jurisdiction over the parties and subject matter pursuant to 28 U.S.C. §§ 1331 and 1346. Venue in this matter is proper in the Southern District of Texas, Houston Division. 28 U.S.C. § 1391.

8. The parties have entered into this Agreed Judgment freely and without coercion. The parties hereby waive all rights to appeal.

9. The Court **ORDERS** that with respect to any applications for forgiveness of PPP loans submitted by any or all Plaintiffs, or that may be submitted by Plaintiffs, the Small Business Administration, or anyone acting in concert with or at the direction of the Small Business Administration will process the applications without regard to the Challenged Rule.¹

10. It is further **ORDERED** that aside from prohibiting application of the Challenged Rule to any applications for PPP loan forgiveness that Plaintiffs have submitted or may submit, nothing in this Agreed Judgment has, shall have, or may be interpreted to have, any impact or effect on the other terms, conditions, and processes applicable

¹ The Small Business Administration shall have no responsibility or liability for any third party failing to comply with this Judgment.

to the Plaintiffs' eligibility for, or forgiveness of, their PPP loans that exist at the time of this Agreed Judgment's entry.

11. It is further **ORDERED** that this Agreed Judgment only affects applications for forgiveness of PPP loans funded before June 1, 2021, and it shall have no effect on the award of or forgiveness of any loan requested thereafter.

12. It is further **ORDERED** that the Plaintiffs shall take nothing on their claims in the above-captioned action, including, but not limited to, any claim to recovery of their attorneys' fees.

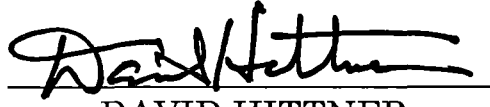
13. It is further **ORDERED** that all parties shall bear their own costs, expenses, and attorneys' fees.

14. The Court shall retain jurisdiction of this matter for the purpose of enabling the parties to apply to the Court at any time for such further orders and directives as may be necessary or appropriate for the interpretation, construction, or modification of this Agreed Judgment, or for the enforcement of compliance therewith.

15. This Agreed Judgment shall constitute a final judgment that disposes of all claims of all parties. The above-captioned case is closed.

IT IS SO ORDERED.

SIGNED at Houston, Texas, on this 23 day of Aug, 2021.

A handwritten signature in black ink, appearing to read "David Hittner", written over a horizontal line.

DAVID HITTNER
United States District Judge

STIPULATED AND AGREED TO BY:

WALLACE & ALLEN, LLP

By: s/ William X. King

Casey T. Wallace

State Bar No. 00795827

S.D. Tex. ID No. 20117

William X. King

State Bar No. 24072496

S.D. Tex. ID No. 1674134

440 Louisiana, Suite 1500

Houston, Texas 77002

Telephone: (713) 224-1744

Facsimile: (713) 227-0104

cwallace@wallaceallen.com

wking@wallaceallen.com

ATTORNEYS FOR PLAINTIFFS

JENNIFER B. LOWERY

Acting United States Attorney

By: s/ Richard A. Kincheloe w/ permission

Richard A. Kincheloe

Assistant United States Attorney

Attorney-in-Charge

United States Attorney's Office

Southern District of Texas

Texas Bar No. 24068107

S.D. Tex. ID No. 1132346

1000 Louisiana St., Suite 2300

Houston, Texas 77002

Telephone: (713) 567-9422

Facsimile: (713) 718-3033

Email: Richard.Kincheloe@usdoj.gov

ATTORNEY FOR DEFENDANTS